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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,527	09/14/2001	Karl Reuter	033265-003	4392

21839 7590 07/15/2003

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EXAMINER

KUHAR, ANTHONY J

ART UNIT	PAPER NUMBER
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1754

DATE MAILED: 07/15/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/936,527

Applicant(s)

REUTER, KARL

Examiner

Anthony J Kuhar

Art Unit

1754

--Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 7/3/03 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

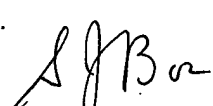
Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☒ Other: The final rejection of record is hereby maintained.


STEVEN BOS
PRIMARY EXAMINER
GROUP 1100

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments filed 7/3/03 have been fully considered but they are not persuasive. Applicant argues that in Reuter '259, the emulsion is already supersaturated with the desired substance and the impurity at a constant level prior to crystallization. It then follows that only the substance which is crystallized out in the first step, e.g. the desired substance, is reloaded in column 3. Applicant claims reloading with additional impurities each cycle (thereby creating an unsteady state process), which applicants state the prior art does not teach. While the Reuter '259 reference may not teach such an unsteady state process where the net amount of impurities increases in the emulsion each cycle, the WO '644 does appear to suggest such a net increase in the amount of impurities. Page 16, lines 10-13 teach "To supersaturate the microemulsion with the desired substance or with the aggregate mixture, the microemulsion and the feed aggregate mixture in the container or column 3 may be heated, e.g. at a temperature greater than in the crystallizer or may be treated with ultrasound." Therefore, the fact that applicant has recognized that the emulsion is supersaturated with the desired substance and the impurities immediately before crystallization because of cooling has no bearing on the fact that after crystallization, the emulsion is reheated, and the prior art appears to teach that the emulsion then has the capability to take up additional aggregate mixture or desired substance. Therefore, the WO '644 reference appears to teach both the steady state and unsteady state operation of the invention. Regarding page 5 of applicant's response, examiner notes applicant's definitions of dissolution and saturation. However, since the WO '644 reference does appear to teach the (macroscopic, net) dissolution of impurities and the desired substance (aggregate mixture) into the emulsion during reloading, applicant claims still do not distinguish over the prior art..